

UNITED STATES CIVIL SERVICE COMMISSION
Office of the Executive Director
Interagency Advisory Group
1900 E Street, N.W.
Washington, D.C. 20415

Minutes of the IAG Adverse actions and Appeals Committee

March 17, 1978

Wilma Lehman of the Policy Analysis and Development Division of the Bureau of Policies and Standards chaired the meeting. Elsie Fisher of the Bureau of Training announced a new course put out by the Personnel Management Training Center: "Legal Issues in Public Personnel Administration: A Seminar". The course is designed to provide a comprehensive overview of the legal issues connected with personnel policies and procedures of Federal agencies for agency personnel specialists, EEO specialists, administrative officers, and others who advise management on or initiate personnel management actions. It is not designed for agency attorneys, for whom another course is offered: "Law of Federal Employment Seminar."

Aspects of Special Emphasis Program proposals of interest to the Committee

Mike Sherwin, who presently serves as Special Assistant to the CSC Executive Director for the Special Emphasis Program now being developed mentioned FPM Bulletin 713-49 which discusses the proposals, and gave a summary of the status of the program, and plans for its implementation. Based on the President's directive to increase affirmative action efforts, the revised plan is being implemented by several work groups: an interbureau CSC drafting team, an IAG workgroup to react to the staff work, and a steering group chaired by Hale Champion, Undersecretary of HEW, providing overall direction and policy advice. Responsibility for implementation rests with the Commission's Executive Director.

Present plans call for the determination by CSC of the occupations in the Federal work force in which women and minorities are underrepresented. Representation in professional positions would be compared to that in college degree-holder populations and other Federal positions to representation in the general work force. If employment of these groups in the Federal workforce were less than 80% of the college graduate or the general work force proportion, underrepresentation would be considered to exist. Initially, to determine in which occupations women and minorities might be underrepresented, those with more than 2000 employees will be looked at.

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In the event of underrepresentation in an occupation, the Special Emphasis Program appointment authority would be triggered, allowing the use of excepted appointments to fill up to 20% of the positions filled from outside in an occupation. Such appointments will be Schedule A, not to exceed two years, and would be open to all applicants. Veteran preference will apply. Ultimately, an Executive order will be required since conversion of persons in these appointments to the competitive service after two years of successful performance in the job will be allowed.

The program is planned as a five-year experiment to develop alternate methods to select persons for jobs under the program. Hiring methods so far considered include random selection, superior scholastic performance, specially-developed job-related qualifications requirements, and selection methods aimed at economically disadvantaged or the handicapped. If the alternatives prove successful, eventually they may be incorporated into the competitive examining process.

Other aspects of the Program include: (1) consolidation within CSC of all special emphasis programs; (2) all agency planning and reporting requirements, including goals and timetables, similarly consolidated.

Mary Sugar of PADD noted that the SEP appointees would be covered by part 430; procedures in part 531 covering within-grade increases; parts 713, 752B (if preference eligibles with more than one year's current continuous service), and 771 (for negotiated grievance procedures).

Questions and discussion by members concerning the proposal:

- Since these appointments would be open to all, once the special hiring authority was triggered by underrepresentation in an occupation, how would the purpose of the program be carried out? Mr. Sherwin said that agency recruiting efforts will be targeted at the underrepresented groups, but that applications will be accepted from any one interested. In view of the requirements for competition and that the program be open to all, immediate dramatic improvements in representation are not likely.
- would CSC approval be necessary after the hiring authority is triggered, if the agency decided that underrepresentation existed in that occupation in the agency? CSC approval would not be necessary if the agency used approved alternative selection methods for occupations which had been triggered nationwide by CSC. Prior CSC approval would be required, however, for use of other selection methods or use of the authority in occupations other than those triggered nationally.

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- Is there a relationship between SEP and agency affirmative action plans? Yes, agencies would use the Special Emphasis Program as one tool in their affirmative action efforts.
- Must agency qualification standards and the selection methods meet the validity requirements of the Federal Executive Agency Guidelines? As provided in the revised agency guidelines, the standards and selection methods would not have to meet rigid requirements, but would have to be job-related.

CSC proposals for legislative change

Mrs. Sugar next summarized the status of this package, introduced in both House and Senate as H.R. 11280 and S. 2640, respectively. Hearings were held March 14 by the House Post Office and Civil Service Committee and will be held again on March 21 and 22. Changes of interest to the group made in the legislative proposal since the last meeting are as follows:

-- Chapter 43:

- o Each agency is required to establish performance standards and communicate them to the employee, but there is no requirement that this be done in writing.
- o Appeal rights in demotions and removals taken under the proposed chapter 43 procedures are limited to those persons covered by part 752B.

-- Chapter 75: The phrase "any and all reasons specifically and in detail" has been changed to "specific reasons".

-- Chapter 77:

- o The appeals officer is limited in holding hearings to situations where there are material issues of fact requiring evidence to be presented.
- o An appellant has the responsibility of showing that the agency's decision contained error that substantially impaired his rights, was based on prohibited discrimination, or was arbitrary or capricious.
- o Payment of attorneys' fees would be required or permitted only if the agency's action was wholly without basis in fact or law.
- o The Merit Systems Protection Board may by regulation provide alternate methods of handling appeals. However, specific mention of arbitration has been removed from the bill.

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Finally, Mrs. Sugar brought to the members' attention the recently released GAO report: "Federal Employee Performance Rating Systems Need Fundamental Changes", the number of which is B-150411.

For your information we have enclosed copies of the FEAA and ARB decisions on a demotion action resulting from a classification decision.

One of the members has requested that agency solutions and problems in the area of employee discipline be shared with the group. The HUD presentation of its table-of-penalties study was mentioned as an illustration. Please phone Cynthia Field, 632-5623, with any suggested problems or solutions.